

AMENDED IN SENATE JUNE 5, 2002  
AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1845**

**Introduced by Assembly Member Correa**

January 28, 2002

---

An act to amend Section 7170 of the Government Code, relating to state liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 1845, as amended, Correa. State liens: priority of enforcement: victims restitution fees and orders.

Existing law governs the priority of state tax liens filed against personal and real property interests.

This bill would provide that liens filed to enforce a victims restitution fine or a victims restitution order take priority over tax liens filed by the state without regard to the date the lien was filed or came into existence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7170 of the Government Code is  
2 amended to read:  
3 7170. (a) Except as provided in subdivisions (b) and (c), a  
4 state tax lien attaches to all property and rights to property whether  
5 real or personal, tangible or intangible, including all after-acquired

1 property and rights to property, belonging to the taxpayer and  
2 located in this state. A state tax lien attaches to a dwelling  
3 notwithstanding the prior recording of a homestead declaration (as  
4 defined in Section 704.910 of the Code of Civil Procedure).

5 (b) A state tax lien is not valid as to real property against the  
6 right, title, or interest of any of the following persons where the  
7 person's right, title, or interest was acquired or perfected prior to  
8 recording of the notice of state tax lien in the office of the county  
9 recorder of the county in which the real property is located  
10 pursuant to Section 7171:

11 (1) A successor in interest of the taxpayer without knowledge  
12 of the lien.

13 (2) A holder of a security interest.

14 (3) A mechanic's lienor.

15 (4) A judgment lien creditor.

16 (c) A state tax lien is not valid as to personal property against:

17 (1) The holder of a security interest in the property whose  
18 interest is perfected pursuant to Section 9308 of the Commercial  
19 Code prior to the time the notice of the state tax lien is filed with  
20 the Secretary of State pursuant to Section 7171.

21 (2) Any person (other than the taxpayer) who acquires an  
22 interest in the property under the law of this state without  
23 knowledge of the lien or who perfects an interest in accordance  
24 with the law of this state prior to the time that the notice of state  
25 tax lien is filed with the Secretary of State pursuant to Section  
26 7171.

27 (3) A buyer in ordinary course of business who, under Section  
28 9320 of the Commercial Code, would take free of a security  
29 interest created by the seller.

30 (4) Any person (other than the taxpayer) who, notwithstanding  
31 the prior filing of the notice of the state tax lien:

32 (A) Is a holder in due course of a negotiable instrument.

33 (B) Is a holder to whom a negotiable document of title has been  
34 duly negotiated.

35 (C) Is a protected purchaser of a security or is a person entitled  
36 to the benefits of Section 8502 or 8510 of the Commercial Code.

37 (D) Is a purchaser of chattel paper who gives new value and  
38 takes possession of the chattel paper in the ordinary course of the  
39 purchaser's business or a purchaser of an instrument who gives  
40 value and takes possession of the instrument in good faith.

1 (E) Is a holder of a purchase money security interest.

2 (F) Is a collecting bank holding a security interest in items  
3 being collected, accompanying documents and proceeds, pursuant  
4 to Section 4210 of the Commercial Code.

5 (G) Acquires a security interest in a deposit account or in the  
6 beneficial interest in a trust or estate.

7 (H) Acquires any right or interest in letters of credit, advices of  
8 credit, or money.

9 (I) Acquires without actual knowledge of the state tax lien a  
10 security interest in or a claim in or under any policy of insurance  
11 including unearned premiums.

12 (J) Acquires any right or interest in property subject to a  
13 certificate of title statute of another jurisdiction under the law of  
14 which indication of a security interest on the certificate of title is  
15 required as a condition of perfection of the security interest.

16 (K) Is a purchaser of an instrument who would have priority  
17 under subdivision (d) of Section 9330 of the Commercial Code.

18 (L) Is a purchaser of investment property who would have  
19 priority under paragraph (1), (3), (4), or (5) of Section 9328 of the  
20 Commercial Code.

21 (M) A transferee of money who would take free of a security  
22 interest under Section 9332 of the Commercial Code.

23 (5) A judgment lien creditor whose lien was created by the  
24 filing of a notice of judgment lien on personal property with the  
25 Secretary of State prior to the time the notice of state tax lien is  
26 filed with the Secretary of State pursuant to Section 7171.

27 (d) (1) A state tax lien, whether or not recorded or filed as a  
28 notice of state tax lien, is not valid as to real property or personal  
29 property against the right, title, or interest of a crime victim, to the  
30 extent that all of the following conditions are satisfied:

31 (A) The tax liability underlying the state tax lien arose from the  
32 taxpayer's activities that resulted in a restitution order made under  
33 Sections 1202.4 and 1214 of the Penal Code or an equivalent  
34 United States statute, or a statute of another state of the United  
35 States that bestows the status of a judgment creditor on a crime  
36 victim with a restitution order.

37 (B) The crime victim is owed an unsatisfied portion of a  
38 restitution order described in subparagraph (A).

1 (C) The restitution order was made to provide restitution to the  
2 crime victim for an economic loss arising from the same activity  
3 that gave rise to the tax liability.

4 (2) The priority established by this subdivision is in addition to  
5 any priorities provided by subdivisions (b) and (c) to crime victims  
6 with restitution orders who are given judgment creditor status by  
7 Sections 1202.4 and 1214 of the Penal Code or an equivalent  
8 United States statute, or statute of another state of the United States  
9 that bestows the status of judgment creditor on a crime victim with  
10 a restitution order.

11 (3) For purposes of this subdivision, the term “crime victim”  
12 has the same meaning as the term “victim” as described in  
13 subdivision (k) of Section 1202.4 of the Penal Code.

14 (4) The following shall apply in situations wherein this  
15 subdivision results in a circularity of lien priorities, in that the  
16 crime victim’s lien is made senior to a state tax lien, but the state  
17 tax lien is otherwise senior to one or more lien creditors that are  
18 senior to the crime victim’s restitution lien:

19 (A) The crime victim’s lien shall be paid first, but only up to the  
20 amount of the state tax lien.

21 (B) If a crime victim’s lien is fully satisfied under subparagraph  
22 (A), and if that payment under subparagraph (A) does not exhaust  
23 the total current amount of the state tax lien, the balance of that  
24 total current amount shall be applied in partial payment under the  
25 state tax lien.

26 (C) If the crime victim’s lien is not fully satisfied under  
27 subparagraph (A), payment then shall be made to any creditors  
28 whose lien priority is established outside this subdivision as  
29 coming between the state tax lien and the crime victim’s lien, and  
30 then, to the extent the crime victim’s lien has not been fully paid  
31 under subparagraph (A), to the crime victim.

32 (D) If the crime victim’s lien is fully satisfied under  
33 subparagraph (A), then, after any payment under subparagraph  
34 (B), payment shall be made to any creditors whose lien priority is  
35 established outside this subdivision as coming between the state  
36 tax lien and the crime victim’s lien.

37 (E) If any balance remains unpaid under the state tax lien after  
38 any and all payments are made under subparagraphs (A), (B), (C),  
39 and (D), payment shall then be made to the state to the extent the



1 state tax lien has not been satisfied by any partial payment made  
2 under subparagraph (B).  
3 (5) *A state agency that has received payment of a state tax lien*  
4 *shall apply the payment pursuant to the requirements of this*  
5 *subdivision.*

O

